

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

TAMI S. KEELING,)	
)	
Plaintiff/Appellee,)	2 CA-CV 2009-0056
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
DEWEY M. TURNEY,)	Rule 28, Rules of Civil
)	Appellate Procedure
Defendant/Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200801499

Honorable Robert Carter Olson, Judge

AFFIRMED

Tami S. Keeling	Maricopa In Propria Persona
Dewey M. Turney	Stanfield In Propria Persona

ESPINOSA, Presiding Judge.

¶1 In this real estate contract dispute, appellant Dewey Turney challenges the trial court’s judgment in favor of appellee Tami Keeling following a trial to the court, contending the judgment is not supported by the evidence. We affirm.

Factual Background and Procedural History

¶2 We view the facts¹ in the light most favorable to upholding the trial court’s judgment. *Sabino Town & Country Estates Ass’n v. Carr*, 186 Ariz. 146, 148, 920 P.2d 26, 28 (App. 1996). In January 2004, Keeling and Turney were divorced but continued living together in the house that is the subject of this dispute. After a domestic altercation, Keeling obtained a protective order against Turney that prohibited him from returning to the house. Several months later, in May 2004, Turney agreed in writing to sell the house to Keeling. The contract provided that Keeling would pay Turney \$760 per month, which he would then forward to the mortgage company; once the loan secured by the mortgage was repaid, Turney would convey title to the house to Keeling.

¶3 Keeling continued to live in the house and made payments to Turney until November 2004, when she was incarcerated. After her release from prison in March 2005, Keeling gave Turney \$30,000 in cash, \$20,000 of which was to be applied to her payments on the home through June 2006, with the remaining \$10,000 to be applied either to reduce the principal on the loan or make future payments. After Keeling was reincarcerated in

¹Neither party has complied with Rule 13(a)(4), Ariz. R. Civ. App. P., which requires briefs to contain “[a] statement of facts relevant to the issues presented for review, with appropriate references to the record.” We therefore draw the facts solely from the available record.

May 2005, her fiancé remained in and maintained the house until December 2005, at which time Turney ordered him to vacate the property. Turney allowed members of his family to reside in the house from January 2006 until April 2008 and then made arrangements to sell the property to a third party. The sale failed to close because Keeling brought suit against Turney and filed a lis pendens against the property.²

¶4 After a one-day bench trial, the court found that Keeling and Turney had entered into a contract for sale of the property, that Keeling had paid Turney \$30,000 in cash in March 2005, and that Turney had breached the contract when he took possession of the property in December 2005 and converted it to his personal use. Accordingly, the court determined Keeling was entitled to possession of the property, subject to any superior claim by a third party, as well as to a credit of \$14,560, reflecting the remaining \$10,000 from the March 2005 payment plus six months of mortgage payments for the period of December 22, 2005 through June 20, 2006, for which Keeling had made the payments but was denied use of the property. We have jurisdiction over Turney’s appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(B).

Discussion

Trial Court’s Factual Findings

¶5 Turney argues the judgment is not supported by the evidence, contending “[e]very item claimed” in Keeling’s complaint was “proven false by the evidence.” These challenges are to the trial court’s implicit and explicit factual findings, which we will not

²Keeling was released from her second term of incarceration in January 2007.

disturb unless they are clearly erroneous. *See City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 65, 181 P.3d 219, 237 (App. 2008). “We will not set aside the [trial] court’s findings of fact unless clearly erroneous, giving due regard to the opportunity of the court to judge the credibility of witnesses.” *In re Estate of Zaritsky*, 198 Ariz. 599, ¶ 5, 12 P.3d 1203, 1205 (App. 2000).

¶6 We first address Turney’s contention that the trial court erroneously found Keeling had paid Turney \$30,000 in March 2005 when he claimed to have received only \$20,000. The amount paid was a disputed issue at trial that required the court to evaluate the evidence and make credibility determinations. Keeling testified she had paid Turney \$30,000 and her fiancé corroborated her testimony, testifying that he had witnessed both the transaction and the amount paid. Deferring to the trial court’s assessment of the witnesses’ credibility, we conclude its finding is supported by the record and not clearly erroneous.

¶7 In a related argument, Turney disputes the validity of the evidence Keeling offered to support her right to ownership of the property. He contends that several of the checks Keeling claimed were evidence of payments to him had been forged, that another payment was in the amount of \$2,263 rather than \$3,263, that Keeling had breached the contract by using the property for illegal drug activities, and that she had agreed to relinquish any claim to the property in exchange for \$7,000 and a truck. Turney presented these arguments below, and the court apparently rejected them, even though it did not make specific factual findings. *See John C. Lincoln Hosp. & Health Corp. v. Maricopa County*, 208 Ariz. 532, ¶ 23, 96 P.3d 530, 538 (App. 2004) (“Implied in every judgment, in addition

to express findings made by the court, is any additional finding that is necessary to sustain the judgment, if reasonably supported by the evidence, and not in conflict with the express findings.’”), quoting *Coronado Co. v. Jacome’s Dep’t Store, Inc.*, 129 Ariz. 137, 139, 629 P.2d 553, 555 (App. 1981). The testimony about each of these issues was conflicting and required credibility determinations. Because, in each instance, the trial court’s implicit rejection of Turney’s arguments is supported by the record, we again defer to the court’s assessments.³

Denial of Posttrial Motions

¶8 Turney next argues the trial court erred in denying several motions he filed after the bench trial but before the court entered its final judgment. He claims the court improperly denied both his motion for new trial, in which he alleged he was denied a fair trial due to judicial bias and ineffective assistance of counsel, and his pleading entitled “Notice of Superior Claims,” which was functionally a motion seeking the court’s recognition of third parties’ rights to the property. Because these arguments do not contain any authority or meaningful analysis, however, we will not review them. See Ariz. R. Civ. App. P. 13(a)(6) (“An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citation to the authorities, statutes and parts of the record relied on.”); *Polanco*

³Turney also generally argues the trial court erred by admitting a number of exhibits that “were all proven to not have any foundation and/or were hearsay.” However, because Turney does not identify any specific exhibits or offer any argument to support this vague claim, we will not address its merits. See Ariz. R. Civ. App. P. 13(a)(6); *Polanco v. Indus. Comm’n of Ariz.*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (issue waived by appellant’s failure to develop and support argument).

v. Indus. Comm'n of Ariz., 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (appellant's failure to develop and support argument waives the issue on appeal).⁴

Disposition

¶9 For the reasons stated above, we affirm the trial court's judgment in favor of Keeling.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

GARYE L. VÁSQUEZ, Judge

⁴In any event, the arguments raised in these motions are meritless, primarily because the new evidence upon which Turney relies was available to him before trial. *See Ariz. R. Civ. P. 59(a)(4)* (explaining new trial may be granted based on newly discovered material evidence "which with reasonable diligence could not have been discovered and produced at the trial"). Likewise, the court "specifically reject[ed]" Turney's argument that his counsel was "ineffective or impaired" at trial and correctly noted that Turney, through his counsel, had stipulated that there was no conflict with the trial judge. Moreover, after reviewing the record, we find no support for Turney's assertion that the court "bent all the rules" in favor of Keeling. Finally, Turney's Notice of Superior Claims raised irrelevant issues because the court's decision was expressly limited to the dispute between Turney and Keeling and did not purport to resolve any claims with respect to third parties, which were the subject of Turney's motion.